IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.19215 of 2004

Date of Decision: 25.8.2006

Manjit Kaur .....Petitioner

Versus

State of Punjab and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE J. S. KHEHAR
HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Arun Bansal, Advocate
for the petitioner.

Mr.Ashok Aggarwal, Additional AG Punjab.

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S.D.ANAND, J.

1. In the present writ petition, the following facts can be safely culled out from the pleadings of the parties and also the material available on the file.

2. Narinderjit Singh, deceased-husband of the petitioner, was enlisted as a Constable on 4.3.1986. He completed the training on 20.12.1986. He was dismissed from service, vide order dated 18.9.1987, on a charge of unauthorised absence from duty. His endeavour at obtaining invalidation of his dismissal from service, by means of a civil suit, failed. However, the first appeal preferred by him against the judgment and decree of the Trial Court was allowed. The State of Punjab filed RSA No.2091of 1993, which ended in a compromise. As per the terms thereof, the

deceased-husband of the petitioner was held entitled to reinstatement with continuity of service and seniority. It was categorically held by this Court that the plaintiff-respondent would not be entitled to the payment of back wages and other allowances. (All these details appear in order dated 14.12.1994, copy whereof has been annexed as Annexure P1). Though Narinderjit Singh was reinstated in service with effect from 14.12.1994, the benefit of notional (though not payable) increments relatable to the period he was under suspension and also dismissal, was denied. A number of representations were made by him in the relevant behalf but those remained undisposed of. He ultimately died on 25.4.2004. Frustrated with the non-responding attitude of the respondents, the petitioner served a legal notice dated 3.6.2004 upon the respondents. When it (notice) remained unresponded, she was constrained to file Civil Writ Petition No.13473 of 2004 which came to be disposed of with a direction to the respondents to take a decision on that notice. The respondents thereupon passed order dated 26.10.2004. However, that order was not in conformity with the compromise. The petitioner was impelled to file COCP No.1456 of 2004 which came to be dismissed as withdrawn, with liberty to challenge the order dated 26.10.2004 in writ petition. The filing of the present Civil Writ Petition was occasioned in the circumstances aforesaid.

3. The petitioner has applied for the grant of a writ of certiorari for quashing impugned order dated 26.10.2004 (Annexure P6) and also for a writ of mandamus directing the respondents to re-fix the pay of her late husband in terms of consensual judgment (Annexure P1). Along there with, the petitioner has also sought a direction to the respondents to pay the arrears etc. with interest @ 24% per annum.

4. The respondents, in the course of joint written statement, did not deny the disposal of RSA No.2091 of 1993 on consensual basis but averred that the terms of compromise did not entitle the late husband of the petitioner to continuity in service.

5. We have heard learned counsel for the parties.

6. The petition deserves to be allowed. Annexure P1 is copy of order dated 14.12.1994 passed by a Single Judge of this Court in RSA No.2091 of 1993. The order incorporates the fact that it was being disposed of on consensual basis. The relevant observations made by the Court are re-produced as under:-

> "Consequently, this appeal is disposed of and it is held that the plaintiff would be entitled to reinstatement with continuity of service and seniority. The plaintiff-respondent would be deemed to be reinstated w.e.f. today. He would report for duty before the concerned authority on 19.12.94. However, the plaintiff-respondent would not be entitled to the payment of back wages and other allowances. A copy of the judgment be given Dasti so that the plaintiff can report for duty." (underlining for emphasis)

7. There can, thus, be no manner of doubt that the late husband of petitioner was entitled to reinstatement with continuity of service and seniority. It completely falsifies the averment to the contrary in the written statement.

8. Faced with the predicament, learned State Counsel argued that this writ petition suffers from the vice of delay and latches inasmuch as the impugned order came to be passed on 14.12.1994; while the present petition

has been filed in the year 2004.

9. The plea raised on behalf of the respondents is plainly oblivious of the fact that the deceased-husband of the petitioner had been making repeated representations during his life time to the respondents in the relevant behalf. Annexures P2 to P4 are copies of some of the letters/representations addressed by him in the context. It would appear inappropriate on the part of the respondents to raise a plea of limitation in the peculiar circumstances of the case. The raising of such a plea would be all the more inappropriate as it is aimed at enabling the respondents to get over the indefensible refrain on their part in the implementation of a consensual verdict in RSA No.2091 of 1993. This aspect requires pertinent cognizance in view of the averment made by the petitioner in the writ petition (and not specifically denied in the corresponding paras of the written statement) that the respondents did indeed obtain legal opinion, in the context, and the District Attorney to whom the matter was referred for legal advice, had opined in favour of the point of view advocated by the petitioner. Interestingly enough, instead of denying the relevant averment, all that was averred by the respondent was that "mere seeking of opinion from the District Attorney or from other Higher authority did not give any legal right to the petitioner".....that in fact the District Attorney is not competent to give any directions to the answering respondent to re-fix the pay of deceased husband of the petitioner." The quoted averments are neither here nor there. There was no averment on behalf of the petitioner that the respondents are bound by the opinion of the District Attorney. The averment narrated a point of fact which has not been denied by the respondents.

10. In the light of foregoing discussion, it is apparent that the deceased-husband of the petitioner was entitled to continuity in service and seniority and the respondents had invalidly denied the same to him.

11. We, accordingly, allow this writ petition. The respondents are directed to fix the pay of the deceased-husband of the petitioner by granting to him the benefit of continuity of service and also seniority. Though the (notional) fixture of pay would not entitle the petitioner to claim disbursement of arrears for the relevant period, the benefit of revised fixture of pay would accrue to her in the matter of quantification of pension and other benefits etc. to which she may be entitled under the law. The respondents must compulsively complete the exercise within a period of two months with effect from the date of receipt of a copy of this order and also ensure the disbursement of the accrued financial benefit (in the matter of fixture of pension) within that period only. As the respondents have been found to have acted with culpable invalidity, the petitioner would also be entitled to interest @ 10% per annum on the amount found due, with effect from the date of relevant accrual till the complete payment thereof.

(S. D. ANAND)
JUDGE

(J. S. KHEHAR)
JUDGE

August 25, 2006
SRM